HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.855 of 2007

Between:

P. Himavardhini

… Petitioner

And

The Vijayawada Municipal Corporation,
Vijayawada, rep. by the Commissioner,
Vijayawada, Krishna District

… Respondent

:: ORDER::

Counsel for the Petitioner: Smt. Harija Akkineni

Counsel for the respondent: None appeared

February 09, 2007

Per G.S. Singhvi, CJ

The petitioner, who claims to have taken a portion of the premises bearing No.39-1-44 situated at M.G.Road, Vijayawada on rent from its owner Kammila Damodara Rao has invoked the jurisdiction of this Court under Article 226 of the Constitution for quashing notice dated 3-1-2007 issued by the Commissioner of Vijayawada Municipal Corporation under Section 636 of the Hyderabad Municipal Corporation Act, 1955 for demolition of the construction made in the parking area.

The thrust of the petitioner's challenge to the impugned notice is that she is not responsible for making any illegal construction in the parking area; that she had taken the premises on rent believing that the construction had been raised in accordance with the relevant statutory provisions and sanctioned building plan and that she has been regularly paying the municipal tax.

We have heard Smt.Harija Akkineni and perused the record. In our opinion, the petitioner's challenge to notice dated 3-1-2007 is liable to be negatived. Since the petitioner is a tenant, she may not be having the copy of the sanctioned building plan, but from the tenor of the impugned notice and reply dated 5-1-2007 sent by the owner to whom a similar notice appears to have been served, it is clear that the disputed construction has been raised in violation of the sanctioned plan and the building regulations.

In **Y. Jyothirmoy and others v. The Municipal Corporation of Hyderabad, Hyderabad, represented by its Commissioner and another – Writ Petition No.17597 of 2006 decided on 19-1-2007**, this Court, after a detailed consideration of various facets on the issue relating to illegal and unauthorized constructions in the urban areas,

ruled that the Court will not interfere with the action taken by the authorities of the local bodies to remove such illegal constructions.

By applying the ratio of the order passed in Writ Petition No.17597 of 2006, the writ petition is dismissed. The reasons recorded in that order shall be read as part of this order.

At this stage, learned counsel for the petitioner made a request that her client may be allowed two months time to vacate the disputed premises. This request of the learned counsel is reasonable and merits acceptance. Hence, we direct that if, within seven days from today, the petitioner furnishes written undertaking to the Commissioner, Vijayawada Municipal Corporation, Vijayawada that she would vacate possession of the disputed premises within two months, the disputed construction shall not be demolished for a period of two months. This would necessarily mean that if the petitioner fails to furnish the required undertaking or vacate the possession at the end of two months, then the municipal authorities shall be entitled to demolish the disputed construction by adopting all legally permissible means.

A copy of this order be sent to the Principal Secretary, Municipal Administration so that he may know how officers of the Corporation constituted under the Andhra Pradesh Municipal Corporations Act, 1994 have deliberately refrained from defending the action initiated by it under Section 636 of the 1955 Act and, thereby, made an attempt to facilitate continuance of interim order passed by this Court.

As a sequel to disposal of the writ petition in the manner indicated above, WPMP No.1069 of 2007 is disposed of as infructuous and interim order dated 11-1-2007 is vacated. This would, however, be subject to the direction by this Court against the

demolition of the disputed construction on furnishing of undertaking by the petitioner.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

February 09, 2007

svs